UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
http://sero.nmfs.noaa.gov

March 30, 2015 F/SER46: HY/RS

Colonel Richard Pannell
District Engineer, Galveston District
Department of the Army, Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Dear Colonel Pannell:

The NOAA's National Marine Fisheries Service Habitat Conservation Division (NMFS HCD) has reviewed the public notice for permit application SWG-2014-00408 dated February 26, 2015. The applicant, the Texas Department of Transportation (TXDOT), is proposing to construct a new bridge over the Corpus Christi Ship Channel at a location approximately 1,000 feet west of the existing U.S. Highway 181 Harbor Bridge. The existing bridge would be demolished and removed. The proposed work would include a new bridge span, new approaches, new roadways, and a reconstructed interchange and connector ramps at Interstate 37 and the Crosstown Expressway. According to the public notice, the project would result in 0.87 acre of temporary impact and 1.53 acres of permanent impacts to wetlands and waters of the U.S. The project is located in Nueces County, Texas at the Corpus Christi Ship Channel within the Inner Harbor and from Beach Avenue on U.S. Highway 181, south to Morgan Avenue on State Highway 286 and from Mesquite Avenue to Buddy Lawrence Avenue on Interstate Highway 37.

The estuarine emergent wetlands, water column and the underlying mud substrate that would be impacted have been identified as Essential Fish Habitat (EFH) by the Gulf of Mexico Fishery Management Council (GMFMC) for postlarval, juvenile, and adult red drum; juvenile white shrimp and brown shrimp; juvenile lane snapper; and adult gray snapper. Open water habitats in the Corpus Christi Bay system have also been designated as EFH by NMFS for highly migratory species including: neonate and juvenile scalloped hammerhead sharks; neonate, juvenile, and adult blacktip, bull, bonnethead and Atlantic sharpnose sharks; neonate and juvenile lemon sharks; neonate and juvenile spinner sharks; and neonate finetooth sharks. Detailed information on federally managed fisheries and their EFH is provided in the 2005 Generic Amendment of the Fishery Management Plans for the Gulf of Mexico prepared by the GMFMC and in the 2009 Amendment 1 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan prepared by NMFS as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (P.L. 104 - 297).

In addition to being designated as EFH, estuarine open water habitat and wetlands, when flooded by the tide, provide nursery, foraging, and refuge habitats that support various economically important marine fishery species, such as spotted seatrout, flounder, Atlantic croaker, black drum, gulf menhaden, striped mullet, and blue crab. Such estuarine-dependent organisms serve as prey for other fisheries managed under the Magnuson-Stevens Act by the GMFMC (e.g., red drum, mackerels, snappers, and groupers) and highly migratory species managed by NMFS (e.g.,

billfishes and sharks). Mid to high marsh wetlands are important transition zones that provide often overlooked valuable support functions essential to the health of the adjacent estuaries. These functions include: (1) providing a physically recognizable structure and substrate for refuge and attachment above and below the sediment surface, (2) binding sediments, (3) preventing erosion, (4) collecting organic and inorganic material, (5) providing nutrients and detrital matter to the estuary, and (6) improving water quality by removing pollutants and excess nutrients and sediments prior to entering bay waters. Saltmarsh wetlands also provide habitat to invertebrates and crustaceans that form the base of the estuarine food chain and provide habitat to small mammals and wading birds.

The TXDOT provided NMFS HCD an EFH assessment dated November 2014 for the proposed project. This assessment identified proposed impacts to EFH consisting of tidally influenced drainage ditches and tidally influenced mid to high marsh wetlands which are periodically flooded by the tide. The EFH assessment stated TXDOT would compensate for all permanent impacts to EFH through implementation of a wetland mitigation plan compliant with the 2008 Mitigation Rule and coordinated with NMFS HCD for approval to ensure it would adequately offset EFH impacts. The current public notice identifies two potential mitigation site alternatives, but does not contain a complete mitigation work plan. Figure 7.1 of Attachment A identifies 1.6 acres of potential mitigation area adjacent to what is labeled a freshwater pond and freshwater wetlands. Figure 7.2 of Attachment A identifies 3.2 acres of potential mitigation area, of which 1.7 acres is labeled low marsh mitigation and 1.5 acres is labeled high marsh mitigation. Since the proposed project would impact open water and emergent mid to high marsh wetlands identified as EFH, TXDOT's mitigation plan needs to target the creation of tidally influenced estuarine marsh not freshwater wetlands. Finally, the public notice lacks a plan for restoration of temporarily impacted estuarine wetlands.

Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations for any federal agency action or permit that would result in adverse impacts to EFH. Accordingly, NMFS recommends Department of the Army authorization for the proposed project not be granted as currently proposed. To ensure the conservation of EFH and associated fishery resources, final action on the proposed permit should require the following:

EFH Conservation Recommendations

1. To compensate for proposed permanent EFH impacts, the applicant should be required to identify, develop, and implement a mitigation plan that would create, restore, and/or enhance EFH (not freshwater wetlands). A complete proposed EFH mitigation work plan and monitoring plan containing the required components outlined in the 2008 Mitigation Rule should be provided for NMFS to review prior to project authorization.

2. The applicant should be required to develop and implement a restoration plan to restore all proposed temporary EFH impacts. A complete EFH restoration work plan and monitoring requirements should be provided for NMFS to review prior to project authorization.

Please be advised that Section 305(b)(4)(B) of the Magnuson-Stevens Act and NMFS' implementing regulation at 50 CFR Section 600.920(k) require the USACE to provide a written response to all EFH recommendations within 30 days of receipt. The USACE's response must include a description of measures to be required to avoid, mitigate, or offset the adverse impacts of the activity. If this response is inconsistent with our EFH conservation recommendations, the USACE must provide a substantive discussion justifying the reasons for not implementing our recommendations. If it is not possible to provide a substantive response within 30 days, the USACE should provide an interim response to NMFS, to be followed by the detailed response at least 10 days prior to final approval of the action.

Thank you for consideration of our recommendations. If we may be of further assistance, please contact Ms. Heather Young of our Galveston Facility at (409) 766-3699.

Sincerely,

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:
EPA, Dallas, Teague
FWS, Corpus Christi, Clements
TPWD, Corpus, Robinson
F/SER4, Dale, Rolfes